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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BERNARD LOVE,

Plaintiff,

vs.

BAY AREA CABLEVISION, INC.,
a California corporation,

Defendant.

Case No.: C0802012HRL

NOTICE OF MOTION AND MOTION
FOR REMAND

Action Date: January 14, 2008

Hearing Date: June 3, 2008

Trial Date: Not Set

Courtroom: 2

PLEASE TAKE NOTICE that on June 3, 2008 at 10:00 a.m., or as soon thereafter as this matter may be heard, in the courtroom of the honorable Howard R. Lloyd, United States Magistrate Judge, Courtroom 2, United States Courthouse, 280 South 1st Street, San Jose, California, the undersigned on behalf of the plaintiff will and hereby does move this Honorable Court pursuant to 28 U.S.C. §1447(c)

1 for remand of this action to the Superior Court of the State of California, County of
2 Santa Clara.

3
4 AS GROUNDS THEREFORE, plaintiff states:

5 1. This action was originally filed on January 14, 2008, in the
6 Superior Court of the State of California, County of Santa Clara, as:
7 *Bernard Love v. Bay Area Cablevision, Inc. and DOES 1-50, Case No. 108-*
8 *CV-103157.*

9 2. This case arises out of a contract entitled Agreement for the
10 Assignment of MMDS License, purportedly executed by the plaintiff and
11 defendant in May 1996. The Agreement purports to effect a transfer to the
12 defendant of the plaintiff's right and interest in an MMDS broadband license
13 issued by the Federal Communication Commission. The Complaint alleges
14 that the signature appearing on the Agreement purporting to be that of the
15 plaintiff was forged, and that the Agreement was entered into and
16 consummated without the plaintiff's knowledge or assent. In the Complaint,
17 the plaintiff seeks declaratory relief pursuant to C.C.P. §1060, finding and
18 adjudging that the Agreement is void and invalid, and setting aside the
19 transfer of plaintiff's rights in the MMDS broadband license purportedly
20 effectuated by the Agreement. The plaintiff also requests an accounting of
21 the profits realized by the defendant as the result of the fraudulent transfer of
22 the plaintiff's rights in the license.

23 3. Defendant Bay Area Cablevision, Inc., filed its Notice of
24 Removal of Action to the United States District Court under 28 U.S.C.
25 §§1331; 1441(B)(Federal Question) on April 17, 2008 [Docket No.6].

1 Defendant's Notice of Removal is premised upon 28 U.S.C. §1441(b),
2 which provides for removal of a civil action founded on a claim or right
3 arising under federal law.

4 4. The plaintiff's claims as set forth in the Complaint arise under
5 California state law, and resolution of these claims will not involve any
6 issues of federal law. As this case does not arise under any provision of
7 federal law, it is not properly removable to this Court under 28 U.S.C.
8 §1441(b). The case may not otherwise be removed to this Court under 28
9 U.S.C. §1441.

10
11 WHEREFORE, the plaintiff respectfully requests that this Court
12 remand this action to the Superior Court of the State of California for the
13 County of Santa Clara.

14
15 Respectfully submitted April ____, 2008.

16 ANTHONY E. BELL LAW OFFICES, INC.

17
18 By: /s/ Anthony E. Bell
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22 LICHTENFELS, PANSING & MILLER, P.C.

23 By: /s/ James F. Scherer
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ATTORNEYS FOR PLAINTIFF

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PROOF OF SERVICE

I, Kathleen Travis, in the City and County of Denver, State of Colorado. I am over the age of 18 and not a party to the within action. My business address is: 885 South Colorado Boulevard, Denver, Colorado 80246, and my email address is: kat@lpmlaw.com.

On April 22, 2008, I caused to be served on the interested parties in said action within:

1. Notice of Motion and Motion for Remand.

by placing a true copy thereof in sealed envelope(s) addressed as stated below and causing such envelopes(s) to be deposited in the U.S. Mail at Denver, Colorado:

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☐ **BY PERSONAL DELIVERY** – I caused document(s) to be hand delivered via Western Messenger to party by close of business day today.

☒ **BY MAIL** – I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Denver, Colorado in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY FACSIMILE** – I caused said document to be transmitted to a facsimile machine maintained by the office of the addressee(s) at the facsimile machine number(s) indicated. Said facsimile number(s) are the most recent numbers appearing on documents filed and served by the addressee(s). I received electronic confirmation from the facsimile machine that document was successfully transmitted without error.

1 [] **BY OVERNIGHT DELIVERY** – Depositing the above document(s) in a box or other
2 facility regularly maintained by FedEx in an envelope or package designated by FedEx with delivery fees
3 paid or provided for.

4 [] **BY E-MAIL** – I caused a true copy of the foregoing document(s) to be served by
5 electronic email transmission at the time shown on each transmission, to each interested party at the email
6 address shown above. Each transmission was reported as complete and without error.

7 I declare that I am employed in the office of a member of the bar of this Court at whose direction
8 the service was made.

9 Executed on April ____, 2008, at Denver County, Colorado.

10 _____
11 (type or print name)

(signature)